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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,698	12/29/2003	Jyrki Mikkola	01329/0200613-US0	2127
7278	7590	10/14/2008		
DARBY & DARBY P.C.			EXAMINER	
P.O. BOX 770			HOLLIDAY, JAIME MICHELE	
Church Street Station				
New York, NY 10008-0770			ART UNIT	PAPER NUMBER
			2617	
			MAIL DATE	DELIVERY MODE
			10/14/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/748,698	<b>Applicant(s)</b> MIKKOLA, JYRKI
	<b>Examiner</b> JAIME M. HOLLIDAY	<b>Art Unit</b> 2617

**—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —**

THE REPLY FILED 24 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires \_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
- (b)  They raise the issue of new matter (see NOTE below);
- (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_

/VINCENT P. HARPER/  
Supervisory Patent Examiner, Art Unit 2617

Applicants basically argue that the Office Action conflated the antenna 411 with the smart structure 16. Further, Khorrami fails to disclose "wherein the periodic movement occurs in a substantial portion of the planar element beyond the location of the piezoelectric element." Also, Applicants argue that the Office Action equates the smart structure with the "planar element belonging to a radiating plane of an antenna in the radio telephone." Applicants further argue that the combination of Pankinaho and Khorrami would result in a plurality of minuscule radiators each having a piezoelectric element and diode fastened to the radiator of an antenna, wherein the RF-energy would be carried to those minuscule radiators so as to actuate movement in a part of the radiator. Also, Applicants argue that the "footprint" of the planar element of the antenna in Khorrami is entirely within or equal to the "footprint" of the piezo electric elements. Applicants further argue that Mahringer fails to disclose "the piezoelectric element induces the periodic movement of a substantial portion of the planar element beyond the location of the piezoelectric element," because the membrane crease mechanically isolates the remainder of the radiating plane. Examiner respectfully disagrees, because the smart structure 16 of Khorrami includes micro-strip antennas 411 that causing the structure to sense and actuate (move). The microstrip antenna is not larger than the piezoelectric layer, but the microstrip antennas are used as smart patches on a smart structure and are used to actuate the structure (planar element) [A sensing voltage, vs, is generated across the piezoelectric substrate due to a response of the structure (e.g., mechanical vibration of the structure) on which the sensing antenna is mounted.] (fig. 1, fig. 10, col. 7 lines 20-22). Further, the limitation of the "planar element belongs to a radiating plane of an antenna in the radio telephone," is taught by Pankinaho, and the Khorrami reference is incorporated to teach that there is a piezoelectric element attached to the planar antenna, and that the second function is periodic movement of the planar element. In response to applicant's argument that the combination of Pankinaho and Khorrami would result in a plurality of minuscule radiators each having a piezoelectric element and diode fastened to the radiator of an antenna, wherein the RF-energy would be carried to those minuscule radiators so as to actuate movement in a part of the radiator, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). As for the Mahringer reference, Examiner maintains that the feature of "the piezoelectric element induces the periodic movement of a substantial portion of the planar element beyond the location of the piezoelectric element." Since "substantial" is a relative term that is defined by the claim as "beyond the location of the piezoelectric element," then the since the crease is beyond the piezoelectric element and vibrates, then the above mentioned limitation is taught. Therefore, in view of the preceding arguments, Examiner maintains previous rejection